

15A NCAC 02D .0531 SOURCES IN NONATTAINMENT AREAS

(a) The purpose of this Rule is to implement a program for new source review in nonattainment areas as required by 40 CFR 51.165. The definitions contained in 40 CFR 51.165(a)(1) and 40 CFR 51.301 shall apply, except for the following:

- (1) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined in accordance with Parts (A) through (C) of this Subparagraph as follows:
 - (A) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five year period immediately preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following apply:
 - (i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;
 - (ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period;
 - (iii) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply. However, if the State has taken credit in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under Part 63 in Title 40 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions;
 - (iv) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6;
 - (v) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant; and
 - (vi) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparts (ii) and (iii) of this Part;
 - (B) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit; and
 - (C) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Part (A) of this Subparagraph, and for a new emissions unit in accordance with the procedures contained in Part (B) of this Subparagraph;

(b) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.165(a)(1)(vi)(C)(1) is seven years.

(c) PM_{2.5} significant levels in 40 CFR 51.165(a)(1)(x)(A) are incorporated by reference except as otherwise provided in this Rule. Sulfur dioxide (SO₂) and nitrogen oxides (NO_x) are precursors to PM_{2.5} in all nonattainment areas. Volatile organic compounds and ammonia are not significant precursors to PM_{2.5}.

(d) In 40 CFR 51.165(a)(1)(xxxvii)(D), starting January 1, 2011, in addition to PM₁₀ and PM_{2.5}, for particulate matter (PM), condensable particulate matter shall be accounted for in applicability determinations and in establishing emission limitations for each of these regulated NSR pollutants in nonattainment major NSR permits.

(e) Redesignation to Attainment. If any county or part of a county to which this Rule applies is later designated in 40 CFR 81.334 as attainment, all sources in that county subject to this Rule before the redesignation date shall continue to comply with this Rule.

(f) Applicability. 40 CFR 51.165(a)(2) is incorporated by reference. This Rule applies to areas designated as nonattainment in 40 CFR 81.334, including any subsequent amendments or editions.

(g) This Rule is not applicable to:

- (1) emission of pollutants at the new major stationary source or major modification located in the nonattainment area that are pollutants other than the pollutant or pollutants for which the area is nonattainment. A major stationary source or major modification that is major for volatile organic compounds or nitrogen oxides is also major for ozone;
- (2) emission of pollutants for which the source or modification is not major;
- (3) a new source or modification that qualifies for exemption under the provision of 40 CFR 51.165(a)(4); or
- (4) emission of compounds listed under 40 CFR 51.100(s) as having been determined to have negligible photochemical reactivity except carbon monoxide.

(h) 15A NCAC 02Q .0102 is not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

(i) To issue a permit to a source to which this Rule applies, the Director shall determine that the source meets the following requirements:

- (1) The new major stationary source or major modification will emit the nonattainment pollutant at a rate no more than the lowest achievable emission rate;
- (2) The owner or operator of the proposed new major stationary source or major modification has demonstrated that all major stationary sources in the State that are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance that is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter that EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality;
- (3) The owner or operator of the proposed new major stationary source or major modification will obtain sufficient emission reductions of the nonattainment pollutant from other sources in the nonattainment area so that the emissions from the new major source and any associated new minor sources will be less than the emissions reductions by a ratio of at least 1.00 to 1.15 for volatile organic compounds and nitrogen oxides and by a ratio of less than one to one for carbon monoxide. The baseline for this emission offset shall be the actual emissions of the source from which offset credit is obtained. Emission reductions shall not include any reductions resulting from compliance (or scheduled compliance) with applicable rules in effect before the application. The difference between the emissions from the new major source and associated new minor sources of carbon monoxide and the emission reductions shall be sufficient to represent reasonable further progress toward attaining the National Ambient Air Quality Standards. The emissions reduction credits shall also conform to the provisions of 40 CFR 51.165(a)(3)(ii)(A) through (G) and (J); and
- (4) The North Carolina State Implementation Plan for Air Quality is being carried out for the nonattainment area in which the proposed source is located.

(j) New natural gas-fired electrical utility generating units for which cost recovery is sought pursuant to G.S. 62-133.6 shall install lowest achievable emission rate technology for NO_x and SO₂, regardless of the applicability of the rest of this Rule.

(k) For the purposes of this Rule, 40 CFR 51.165(f) is incorporated by reference except that 40 CFR 51.165(f)(10)(iv)(A) reads: "If the emissions level calculated in accordance with Paragraph (f)(6) of this Section is equal to or greater than 80 percent of the PAL level, the Director shall renew the PAL at the same level." 40 CFR 51.165(f)(10)(iv)(B) is not incorporated by reference.

(l) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or

modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(m) To issue a permit to a source of a nonattainment pollutant, the Director shall determine, in accordance with Section 173(a)(5) of the Clean Air Act and in addition to the other requirements of this Rule, that an analysis (produced by the permit applicant) of alternative sites, sizes, production processes, and environmental control techniques for the source demonstrates that the benefits of the source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(n) For the purposes of this Rule, the provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director."

(o) Approval of an application regarding the requirements of this Rule does not relieve the owner or operator of the responsibility to comply with applicable provisions of other rules of this Chapter and any other requirements in local, State, or federal law.

(p) Except as provided in 40 CFR 52.28(c)(6), for a source or modification subject to this Rule the following procedures shall be followed:

- (1) Notwithstanding any other provisions of this Paragraph, the Director shall, no later than 60 days after receipt of an application, notify the Federal Land Manager with the U.S. Department of Interior and U.S. Department of Agriculture of an application from a source or modification subject to this Rule;
- (2) The owner or operator of the source shall provide an analysis of the impairment to visibility that would occur because of the source or modification and general commercial, industrial and other growth associated with the source or modification;
- (3) When a source or modification may affect the visibility of a Class I area, the Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be given at least 30 days before the publication of the notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application, including an analysis provided by the source of the potential impact of the proposed source on visibility;
- (4) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to the Director's satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall follow the public hearing process described in 40 CFR 51.307(a)(3) on the application and include an explanation of the Director's decision or notice where the explanation can be obtained;
- (5) The Director shall issue permits only to those sources whose emissions will be consistent with making reasonable progress, as defined in Section 169A of the Clean Air Act, toward the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I areas when the impairment results from manmade air pollution. In making the decision to issue a permit, the Director shall consider the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source; and
- (6) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

The requirements of this Paragraph do not apply to nonprofit health or nonprofit educational institutions.

(q) In lieu of the requirements in 40 CFR 51.165(a)(6) and (7), this Paragraph shall apply. If the owner or operator of a source is using projected actual emissions to determine applicability with nonattainment new source review requirements, the owner or operator shall notify the Director of the modification before beginning actual construction. The notification shall include:

- (1) a description of the project;
- (2) identification of sources whose emissions could be affected by the project;
- (3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.165(a)(1)(xxviii)(B)(3);
- (4) the calculated baseline actual emissions in Subparagraph (a)(1) of this Rule and an explanation of how the baseline actual emissions were calculated; and

(5) any netting calculations, if applicable.

If upon reviewing the notification, the Director finds that the project will require a nonattainment new source review evaluation, the Director shall notify the owner or operator of his or her findings and the owner or operator shall not make the modification until a nonattainment new source review permit has been issued pursuant to this Rule. If the Director finds that the project will not require a nonattainment new source review evaluation and the projected actual emissions, calculated pursuant to 40 CFR 51.165(a)(1)(xxviii)(B)(1) and (2) minus the baseline actual emissions is 50 percent or greater of the amount that is a significant emissions increase, without reference to the amount that is a significant net emissions increase, for the regulated NSR pollutant, then, the Director shall require a permit application to include a permit condition for the monitoring, recordkeeping, and reporting of the annual emissions related to the project in tons per years, for 10 years following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit for the regulated NSR pollutant; otherwise these records shall be maintained for five years following resumption of regular operations after the change. The owner or operator shall submit a report to the Director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.165(a)(6)(v)(A) through (C). The owner or operator shall make the information documented and maintained under this Paragraph available to the Director and the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii). The monitoring, recordkeeping, and reporting requirements in this Paragraph shall not apply if the projected actual emissions calculated pursuant to 40 CFR 51.165(a)(1)(xxviii)(B)(1) and (2), minus the baseline actual emissions, is less than 50 percent of the amount that is a significant emissions increase, without reference to the amount that is a significant net emissions increase, for the regulated NSR pollutant.

(r) Portions of the regulations in the Code of Federal Regulations (CFR) that are referred to in this Rule are incorporated by reference unless a specific reference states otherwise. The version of the CFR incorporated in this Rule, with respect to 40 CFR 51.165, is that as of July 1, 2019, at <https://www.govinfo.gov/content/pkg/CFR-2019-title40-vol2/pdf/CFR-2019-title40-vol2-sec51-165.pdf> and does not include any subsequent amendments or editions. Federal regulations referenced in 40 CFR 51.165 shall include subsequent amendments and editions. The publication may be accessed free of charge.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b); Eff. June 1, 1981; Amended Eff. December 1, 1993; December 1, 1992; August 1, 1991; December 1, 1989; October 1, 1989; July 1, 1988; October 1, 1987; June 1, 1985; January 1, 1985; February 1, 1983; Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner; Amended Eff. September 1, 2013; January 2, 2011; September 1, 2010; May 1, 2008; May 1, 2005; July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994; Readopted Eff. November 1, 2020.